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DEPARTMENT FOR WHA/CEN

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FOR UNITED STATES TRADE REPRESENTATIVE - A.MALITO

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SUBJECT: CAFTA RATIFICATION ADVANCES IN COSTA RICA

REF: SAN JOSE 1792

**¶1.** (U) Summary. Although President Arias has made it a top priority, Costa Rican efforts to ratify and implement CAFTA-DR have proceeded at a slow pace, but are picking up speed. After more than five months of committee deliberations, the President of the legislative assembly (the Asamblea), with the backing of two-thirds of the body, has finally given the committee a deadline of midnight December 12 for reporting the ratification bill out of committee. If this deadline is met (as we anticipate), then full Asamblea debate will begin after the holiday recess in January, with the first of two required plenary votes expected by mid-February. If there are no glitches, this timetable could lead to the second (and ratifying) vote in April, following mandatory review by the Supreme Court in March. Ratification is just the first step, however. Twelve of thirteen bills necessary to implement the treaty have been introduced, but only three have been reported out of committee and are ready for debate by the full Asamblea. End Summary.

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COMMITTEE ACTION ON CAFTA RATIFICATION  
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**¶2.** (U) For more than five months Costa Rica's Asamblea has held committee hearings on whether to ratify CAFTA-DR, taking testimony from dozens of proponents and opponents. On October 11, the legislature's international relations committee completed its hearings in San Jose. After a one-day blitzkrieg of public fora around the country on October 14, the committee turned its attention to procedural motions and interpretive clauses intended to clarify legislative intent. The committee has considered approximately 200 procedural motions, most of which were stalling tactics by opponents. So far 70 interpretive clauses intended to clarify legislative intent have been introduced in committee.

**¶3.** (U) Because of the delays, on October 31, the President of the Asamblea, with the backing of two-thirds of the body, set a deadline of midnight December 12, 2006, for the committee to vote upon its recommendation. Under legislative rules, any interpretive motions not acted upon by the deadline will be forwarded to the full body for consideration later. Post believes a majority of the committee will recommend ratification on December 12.

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THE ASAMBLEA RATIFICATION PROCESS AND TIMING  
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**¶4.** (U) According to legislative and executive branch sources, the full 57-member Asamblea (Plenary) is expected to begin deliberations in January 2007 with the first of two required plenary votes anticipated by mid-February. Disagreement remains regarding the number of votes necessary to ratify the treaty. While many experts believe a simple majority is sufficient, because some provisions of the treaty require changes that opponents contend conflict with the constitutional protection afforded to parastatal monopolies, the Arias administration believes a two-thirds majority (38 votes) is politically necessary to avoid a Supreme Court challenge and to silence critics. The administration remains confident they have 38 votes.

**¶5.** (U) If the treaty is voted favorably, it will automatically be submitted to the Supreme Court's "Sala IV" chamber for up to 30 days for constitutional and procedural review. Following Supreme Court review, the treaty would be returned to the Asamblea for a second plenary debate and vote which should take only a few days. If there are no glitches, post's best guess at this point is that CAFTA-DR probably will be ratified in Costa Rica in April 2007.

**¶6.** (U) One potential glitch is the next round of public protests, which may take place around the time of the committee vote (in mid-December) or the first plenary vote (mid-February). GOCR sources, pleased that the anti-CAFTA protests fell flat in October, have admitted to us that broader protests, (e.g., bringing in taxi drivers who could block streets, especially in San Jose), or more intense protests (e.g., making more use of university students) could be problematic. Another potential glitch is in the Asamblea itself, where opposition parties, led by Otton Solis and the PAC party, could flood the plenary debate with motions as a stalling tactic. Based on media interviews since November 12, the PAC seems to have chosen the plenary as its next battleground. The third potential glitch is the Supreme Court, where opponents could bring a number of challenges to the treaty.

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ENTRY INTO FORCE  
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**¶7.** (U) Ratification is only the first step in bringing CAFTA-DR into force in Costa Rica, however. The United States Trade Representative (USTR) has identified 13 areas of Costa Rican law that must be amended to bring the country's laws into compliance with the treaty before it can enter into force. Twelve of the necessary thirteen bills have been introduced in the Asamblea. Of those, three relatively non-controversial bills have passed out of committee and await action in the Plenary.

**¶8.** (U) Under Costa Rica's unusual legislative procedure, from December 1 until April 30 the executive branch controls the legislative agenda. This week the Arias administration announced its first set of priorities for legislative action. Three of the thirteen required CAFTA implementation bills appear on the priority list: Priority #3 - Opening of the insurance market; Priority #7 -

intellectual property rights (IPR) reforms (the third of three required); and Priority #11 - opening of the telecommunications market. These three bills are considered the most difficult and controversial part of the implementation agenda

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COMMENT  
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¶9. (SBU) One political commentator described the CAFTA process to us as a championship bout between evenly matched boxers. There will be many rounds, and (probably) no knockout by either side. The illustration may be apt. The Arias administration got off to a slow start, but has been gaining ground. As the legislative process continues, the government will have to take more punches -- in our view, more likely in the Asamblea than in the Supreme Court or in "the streets". With sufficiently focused and determined political leadership, post believes the Arias administration is up to the challenge of

¶10. (SBU) The real challenge will be the race to pass all of the legislation necessary implementing legislation before the Feb. 29,008 deadline. If the Asamblea ratifies the agreement in April, the GOCR will have approximately 300 days to pass necessary legislation. Guatemala, Honduras, El Salvador, and the Dominican Republic have all taken an average of 450 days (ranging from 396-478 days; in the case of the CAFTA into force. The question remains whether the GOCR follows that pattern or emulates Nicaragua's example (which took only 173 days) of